

This Non-Disclosure Agreement (“Agreement”) is entered into on \_\_\_\_\_, 2009, between San Diego County Credit Union, a California chartered credit union (“SDCCU”) and the undersigned member (“Member”).

**RECITALS**

A. Member is borrower on a certain loan product provided by SDCCU<sup>®</sup> (“Loan”) and desires for SDCCU to provide it with different terms with respect to such Loan;

B. SDCCU is willing to disclose to Member different available options with respect to restructuring such Loan subject to Member’s agreement to keep such information as well as the revised Loan terms strictly confidential.

NOW, THEREFORE, in consideration of the mutual provisions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. All proposals for revised Loan terms and conditions, financial information, new contractual provisions and financial terms, any other information disclosed by SDCCU to Member incidental to the proposed restructuring of the Loan (whether such Loan is restructured or not), and the terms and conditions of the restructured Loan, shall be deemed to be Confidential Information, regardless of whether marked or identified as “CONFIDENTIAL” or “PROPRIETARY.” Notwithstanding anything else to the contrary, SDCCU is not obligated to disclose any new Loan terms or to enter into any Loan restructuring agreement with Member.
2. Scope. The parties agree that the Confidential Information shall be reviewed by Member only incident to negotiating proposed new terms for the Loan, and for no other purpose. SDCCU retains the sole and exclusive ownership to the Confidential Information, and no license or any other interest in the Confidential Information is granted to Member. Member acknowledges that all Confidential Information received from SDCCU is provided without any warranty by SDCCU that such information will be suitable for Member’s situation.
3. Restrictions. Member agrees to protect the Confidential Information with the same degree of care that is uses to protect its own confidential information, but in all events will use at least a reasonable degree of care. In addition to such degree of care, Member shall not in any way disclose or otherwise transfer the Confidential Information to any third party at any time, including consultants, except as approved by SDCCU in writing in advance; and/or (b) disclose the parties’ discussions about the Confidential Information and/or their business relationship to any third party, except as approved by SDCCU in writing in advance. The provisions of this Section 3 shall survive the termination of this Agreement.
4. Exceptions. The obligations and restrictions herein shall not apply to Confidential Information that is released pursuant to a court order or otherwise required by law (including without limitations as required under federal or state laws) provided that Member immediately notifies SDCCU of such court order or legal requirement, and gives SDCCU a reasonable opportunity and cooperates with SDCCU to contest, limit or condition the scope of such required disclosure.
5. Liquidated Damages. In the event that Member breaches the provisions of this Agreement, then Member shall pay to SDCCU an amount equal to the lesser of (“Penalty”): (i) Twenty Five Percent (25%) of the unpaid principal (as of the date hereof) of the Loan; or (ii) the amount of Fifty Thousand Dollars (\$50,000). Payment of the Penalty to SDCCU pursuant to this Section 5 shall be considered liquidated damages in accordance with the following:

THE TERMS THAT SDCCU NEGOTIATES WITH EACH BORROWER ARE CONFIDENTIAL AND KEEPING SUCH INFORMATION CONFIDENTIAL IS CRITICAL TO SDCCU BEING ABLE TO NEGOTIATE WITHOUT PREJUDICE WITH ITS BORROWERS AS REQUIRED FOR EACH OF THEIR PARTICULAR SITUATION. INSOFAR AS IT WOULD BE EXTREMELY IMPRACTICABLE AND DIFFICULT TO ESTIMATE THE DAMAGE AND HARM WHICH SDCCU

**NON-DISCLOSURE AGREEMENT**



WOULD SUFFER IN THE EVENT OF THE BREACH OF THIS AGREEMENT BY MEMBER AND THE DISCLOSURE OF CONFIDENTIAL INFORMATION HEREUNDER TO THIRD PARTIES, SDCCU SHALL BE ENTITLED TO THE PENALTY AS LIQUIDATED DAMAGES SET FORTH IN THIS SECTION 5.

SDCCU: \_\_\_\_\_  
Initial

MEMBER: \_\_\_\_\_  
Initial

6. Return of Materials. All copies of Confidential Information, whether in tangible or machine readable form, shall be promptly returned to SDCCU upon SDCCU’s request. Member shall thereafter retain no copies, transcriptions or summaries of any portion of the Confidential Information.

7. Governing Law/Venue. This Agreement shall be interpreted and enforced according to the substantive laws of the State of California without application of its conflicts or choice of law rules. Both parties irrevocably submit to the jurisdiction of the state and/or Federal courts in San Diego County, California for any action or proceeding regarding this Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and superseded all prior or contemporaneous understandings, oral or written. This Agreement can only be amended by a writing signed by both parties.

9. Assignment. Neither party shall have the right to assign or otherwise transfer, in whole or in part, any of its rights or obligations under this Agreement.

10. Validity. If any provision hereof is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect, and the affected provisions shall be revised so as to reflect the original intent of the parties hereunder to the maximum extent permitted by applicable law.

11. Attorney’s Fees. In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to recover reasonable attorney’s fees and costs in addition to any other relief to which it is entitled.

12. Waiver. The failure to enforce any provisions of this Agreement shall not be deemed a waiver or a continuing waiver of the same or other provision of this Agreement unless such waiver is in writing and signed by the party to be charged.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

San Diego County Credit Union

Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_